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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/761,143 01/16/01 NAIR

M MSU 4,1-541

021036  
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HM22/0809

EXAMINER

PATTEN, P

| ART UNIT | PAPER NUMBER |
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1651

*8*

DATE MAILED:

08/09/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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Washington, D.C. 20231

DEA/FCE-1994

| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------|-------------|-----------------------|---------------------|
| 09/761,143    | 1/16/01     | Nair et al.           | MSU 4.1-541         |

| EXAMINER        |              |
|-----------------|--------------|
| Patricia Patten |              |
| ART UNIT        | PAPER NUMBER |
| 1651            | 8            |

DATE MAILED:

**Please find below a communication from the EXAMINER in charge of this application**

Commissioner of Patents

Newly submitted claims 1, 3-6, 15-18 and 27-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 1, 3-6, 15-18 and 27-34 are now drawn to a method for inhibiting cyclooxygenase or prostaglandin H synthase via administration of cyanidin along with another bioflavanoid, whereby the originally presented claims were simply drawn to the method using cyanidin.

The claims are properly restricted under US restriction practices because the respective methods are patentably distinct. For example, the originally presented claims which were drawn to a method for inhibiting cyclooxygenase or prostaglandin H synthase via administration of cyanidin (Invention I) is restrictable from a method for inhibiting

cyclooxygenase or prostaglandin H synthase via administration of cyanidin along with another bioflavanoid (Invention II) is a combination/subcombination. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because, as evidenced by the claims themselves, cyanidin alone, without another bioflavanoid could inhibit cyclooxygenase or prostaglandin H synthase. The subcombination, which incorporates another bioflavanoid, may have separate utility such as an antibacterial agent. For example, kaempferol, a flavonol found in cherries, is known to exhibit antibacterial properties.

Since applicant has received an action on the merits for the originally presented invention (Invention I), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 3-6, 15-18 and 27-34 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Because all of the pending claims are drawn to a non-elected invention, the amendment filed on 7/2/02 is considered non-responsive (MPEP § 821.03).

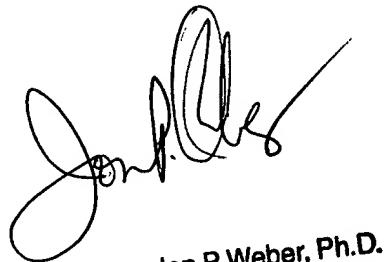
Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever

is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner **Patricia Patten**, whose telephone number is **(703)308-1189**. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Jon P. Weber, Ph.D.  
Primary Examiner